



D7

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data removed to
protect clearly documented
violation of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

11 JAN. 2002

File: WAC 99 070 51536 Office: CALIFORNIA SERVICE CENTER Date: 11 JAN. 2002

IN RE: Petitioner
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Weimann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business engaged in importing and selling ceramic tile. The petitioner seeks to employ the beneficiary in the United States as its president and chief financial officer. The director determined that the petitioner had not established the financial ability to commence business in the United States and had failed to provide evidence that sufficient physical premises had been secured for the new business.

On appeal, the petitioner agrees with the director's decision and submits evidence in an effort to cure the deficiencies of the petition.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The petitioner was incorporated in the state of California in October of 1998 and the petition was filed in January of 1999. The petition requests an L-1A nonimmigrant visa for the beneficiary in order to set up a new office for the petitioner in California. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(1)(1)(ii) that states in pertinent part that:

- (F) New office means an organization which has been doing business in the United States through a parent,

branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to establish compliance with the requirements set forth in 8 C.F.R. 214.2(l)(3)(v).

8 C.F.R. 214.2(l)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner initially submitted its articles of incorporation, a share certificate and a lease for premises in the United States. In addition, the petitioner submitted documents about its parent company, the claimed foreign entity in this case, including a summary translation of a document incorporating the foreign entity, a partially translated financial statement, an untranslated copy of registration with the Mexican government and an untranslated bank statement showing one month of the foreign entity's business activity.

The director requested that the petitioner supply additional evidence that the foreign entity was active and conducting

business. The director also requested the petitioner provide evidence that sufficient physical premises had been secured for the petitioner in the United States. The director further requested evidence of the ownership of the foreign entity and evidence that established the size of the foreign entity's investment in the petitioner. The director also requested evidence of the ability of the petitioner to commence doing business in the United States. The director finally requested organizational charts of the foreign entity and the petitioner describing the beneficiary's position in both organizations. The director also noted that all documents submitted in a foreign language must be translated completely for the documents to be considered in the adjudication of the petition.

In reply, the petitioner indicated to the director that many of the requested documents could not be supplied because the petitioner was a new business and was waiting for the approval of the L-1 classification of the beneficiary to begin operations in the United States. The petitioner did provide complete translations of the foreign entity's incorporating documents, a service agreement with another company to demonstrate the foreign entity was actively conducting business, and translated versions of the foreign entity's balance sheet and bank statement. The petitioner also provided a signed Internal Revenue Service Form 8821.

The director determined that the record did not demonstrate that the petitioner had secured sufficient physical premises to begin operations. The director determined further, that the record did not contain evidence of the financial investment in the petitioner. Finally, the director determined that the record did not contain evidence that the petitioner had the financial ability to commence doing business in the United States.

On appeal, the petitioner submits its bank statement showing funding in the amount of \$125,000 to commence operations in the United States. The petitioner also submits a new lease agreement for warehouse and office space, asserting that the new leased space is sufficient for it to begin operations in the United States. The petitioner also submits a bank statement from a recently opened account to show that it now has funding to begin operations.

In review, the evidence the petitioner submits with this request is evidence originally requested by the director in the request for additional evidence dated February 16, 1999. As noted above, the director requested detailed information on the above issues and the information was not provided. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." The evidence submitted by the petitioner does not establish that the petitioner met the

requirements in 8 C.F.R. 214.2 (1)(3)(v) at the time of filing.

Beyond the decision of the director, the petitioner has not provided sufficient evidence of the beneficiary's employment as a manager or executive for one continuous year in the three years preceding the filing of this petition. In addition, the petitioner has not provided sufficient evidence that the petitioner will support an executive or managerial position within one year from the date of approval of the petition. The petitioner has not provided a concrete business plan that outlines the financial goals of the organization nor the number of employees it may hire in the future. Further, the petitioner has provided no comprehensive description of the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States. The foreign entity's unaudited balance sheet and bank statement are insufficient for this purpose.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.